

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
KIRK J. ALFARO,

Plaintiff,

**ANSWER**

CV 07-0747

-against-

COUNTY OF SUFFOLK, SUFFOLK COUNTY  
POLICE DEPARTMENT, TOWN OF SOUTHAMPTON,  
SOUTHAMPTON TOWN POLICE DEPARTMENT,  
POLICE OFFICER RICHARD T. STEEK (P.O. 5665),  
SERGEANT MAHON and OFFICERS JOHN DOE  
NOS. 1 through 10, sued in their individual and official  
capacities,

Defendants.

-----X  
Defendants, TOWN OF SOUTHAMPTON and SOUTHAMPTON POLICE  
DEPARTMENT, by their attorneys, DEVITT SPELLMAN BARRETT, LLP, answering  
plaintiff's complaint, respectfully allege the following:

1. The allegations contained in paragraph numbered "1", "2", "3", "4" and "5" of the  
complaint characterize the legal action being brought and purport to invoke the jurisdiction of the  
Court pursuant to the enumerated statutes and, as such, the defendants make no answer save to  
demand strict proof thereof and to deny any conduct giving rise to any cause of action  
thereunder.

2. Deny knowledge or information sufficient to form a belief as to the allegations  
contained in paragraphs numbered "7", "12", "13", "14" and "18" of the complaint.

3. Deny the allegations contained in paragraph numbered "15" of the complaint  
except admit upon information and belief that on March 29, 2006 Suffolk County Police arrested  
the plaintiff, Kirk J. Alfaro.

4. Deny the allegations contained in paragraph numbered “16”, “19”, “21”, “22”, “23”, “24”, “25”, “26” and “30” of the complaint.

5. Deny upon information and belief the allegations contained in paragraphs numbered “17”, “20” and “27” of the complaint.

6. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered “29” of the complaint, except admit receipt of a purported notice of claim and refer all questions of law to the Honorable Court.

**AS AND FOR AN ANSWER TO COUNT I**

7. In response to paragraph numbered “31” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

8. Deny the allegations contained in paragraphs numbered “32” and “33” of the complaint.

**AS AND FOR AN ANSWER TO COUNT II**

9. In response to paragraph numbered “34” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

10. Deny the allegations contained in paragraphs numbered “35” of the complaint.

**AS AND FOR AN ANSWER TO COUNT III**

11. In response to paragraph numbered “36” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

12. Deny the allegations contained in paragraphs numbered “37” of the complaint.

**AS AND FOR AN ANSWER TO COUNT IV**

13. In response to paragraph numbered “38” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

14. Deny the allegations contained in paragraphs numbered “39” and “40” of the complaint.

**AS AND FOR AN ANSWER TO COUNT V**

15. In response to paragraph numbered “41” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

16. Deny the allegations contained in paragraphs numbered “42” and “43” of the complaint.

**AS AND FOR AN ANSWER TO COUNT VI**

17. In response to paragraph numbered “44” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

18. Deny the allegations contained in paragraphs numbered “45” and “46” of the complaint.

**AS AND FOR AN ANSWER TO COUNT VII**

19. In response to paragraph numbered “47” of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

20. Deny the allegations contained in paragraphs numbered “48” and “49” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

21. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

22. The damages sustained by the plaintiff, if any, were caused by the plaintiff’s own culpable, reckless and/or negligent conduct.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

23. The complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right under federal law or civil rights claim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

24. No policy, statement, regulation or decision officially adopted and/or promulgated by defendants or otherwise ratified by defendants authorize a deprivation of the plaintiff’s constitutional rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

25. No custom or practice adopted, followed, endorsed or ratified by the defendants authorized a deprivation of plaintiff’s constitutional rights.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

26. The doctrines of respondeat superior and vicarious liability do not apply to a civil rights claim.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

27. Municipal defendants are not liable for punitive damages.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

28. Plaintiff has failed to comply with statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

29. The defendants' actions, if any, were justified by the facts and circumstances presented.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

30. The defendants at all times acted reasonably and in good faith in the discharge of their duties and responsibilities. The defendants reasonably believed that they were exercising and acting within their statutory and constitutional powers and pursuant to federal and/or state law. In performing such responsibilities, defendants are and were protected by absolute and/or qualified immunity.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

31. The Southampton Town Police Department, as an agency of the Town of Southampton, is not an entity which is susceptible to suit.

WHEREFORE, defendants demand judgment against the plaintiff dismissing the complaint, together with the costs, disbursements and such other further relief as this Court shall deem just and proper.

Dated: Smithtown, New York  
April 2, 2007

Yours, etc.

DEVITT SPELLMAN BARRETT, LLP  
By David H. Arntsen (7472)  
Attorneys for Defendants  
50 Route 111  
Smithtown, NY 11787  
(631) 724-8833

\_\_\_\_\_/s/  
David H. Arntsen

TO: FUTTERMAN & LANZA, LLP  
Attorneys for Plaintiff  
222 East Main Street, Suite 212  
Smithtown, NY 11787  
(631) 979-4300

SUFFOLK COUNTY ATTORNEYS OFFICE  
Attorneys for County of Suffolk, Suffolk County  
Police Department, Police Officer Steek and  
Sergeant Mahon  
P.O. Box 6100  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11778

NOTARY PUBLIC